

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EVANGELINE JONES,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 98-6262
	:	
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY,	:	
JEROME BRYANT, PAMELA DUNBAR,	:	
and PATRICIA SMITH,	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

May 12, 1999

In granting summary judgment to Plaintiff Evangeline Jones, this Court believed that reasonable attorneys' fees should be awarded and requested that the parties reach an agreement as to the amount. However, if an agreement could not be reached, Plaintiff was directed to file an appropriate motion, which her attorney, Michael Donahue, Esq., has now done. See generally Jones v. Philadelphia Hous. Auth., Civ. A. No. 98-6262, 1999 WL 238951 (E.D. Pa. Apr. 1, 1999). For the reasons discussed below, the motion is granted, but with a reduction in the requested hourly rate.

Plaintiff sought to enforce the terms of two grievance awards in this lawsuit against Defendants pursuant to 42 U.S.C. §§ 1437, 1983. Although these awards required Defendants to make numerous repairs to Plaintiff's rental unit by February 6, 1999, and to pay rent abatements to Plaintiff until the repairs were completed, many of the repairs were still

outstanding and rent abatements had not been credited since June 1, 1998. As Defendants only proffered their naked assertions that they were in compliance with the grievance awards, this Court entered judgment in favor of Plaintiff pursuant to the plain terms of the awards.

When a party has prevailed in an action brought under 42 U.S.C. § 1983, 42 U.S.C. § 1988 provides for an award of attorneys' fees. In the case sub judice, Defendants admit that Plaintiff is a prevailing party as summary judgment was granted in her favor. See Defs.' Mem. at 3. However, to the extent Defendants contend that Plaintiff's counsel is entitled to no fee, see Defs.' Ans.; Defs.' Mem. at 2-3, the Court notes that counsel fees are entirely appropriate in this case. "It is abundantly clear from [Defendants'] litigation strategy that had [Plaintiff] not filed this lawsuit PHA would not have complied with the grievance award[s]." Wallace v. Philadelphia Hous. Auth., Civ. A. No. 95-4261, 1996 WL 273646, at \*2 (E.D. Pa. May 21, 1996) (VanArtsdalen, S.J.).

To determine an award of attorneys' fees under § 1988, the court begins with the lodestar amount, calculated by multiplying the number of hours reasonably spent on the litigation by a reasonable hourly rate. See Blanchard v. Bergeron, 489 U.S. 87, 94 (1989). The court may then adjust that lodestar figure by other factors because "[i]t is central to the awarding of attorney's fees under § 1988 that the district court judge, in his or her good judgment, make the assessment of what is a reasonable fee under the circumstances of the case." Id. at 96.

Defendants challenge as unreasonable the number of hours expended by Plaintiff's counsel and his requested hourly rate.

A. Hours Expended

Plaintiff's counsel begins by arguing in conclusory fashion that "[t]he hours spent by counsel for plaintiff in this case were reasonable." Pl.'s Mem. at 4. But he then attaches a timesheet detailing his work on this case, which amounted to 14.4 hours. See id. (Exhibit C thereto). Defendants object to several entries "as unreasonable in that the time spent was either excessive, unnecessary or was spent on tasks that could have been performed by a student, paralegal or secretary." Defs.' Mem. at 7-9. In support, Defendants attach several documents purportedly attesting to the "boilerplate" nature of the papers filed by Plaintiff's counsel in similar cases. See id. (Exhibits D-H thereto). They also attach a survey conducted by Legalgard, Inc., a company that specializes in reviewing the legal costs of litigation. See generally Defs.' Mem. (Exhibit B thereto).

After independently reviewing each of the time entries, this Court concludes that none are patently excessive given the particular circumstances of this case; rather, they demonstrate that Mr. Donahue spent a modest amount of time on this litigation. For example, the largest time entries are: (1) 1.3 hours (drafting complaint, motion to proceed in forma pauperis, interrogatories, request for production of documents, and self-executing disclosures); (2) 1.6 hours (drafting motion for summary judgment and supporting affidavit); (3) 1.4 hours (drafting reply to motion for summary judgment and motion for leave to file a reply); (4) 1.1 hours (reviewing responses to interrogatories and request for production of documents, and letter detailing need for supplemental responses); and (5) 1.3 hours (drafting motion for attorneys' fees).

While assuredly the identified tasks “could have been performed by a non-lawyer, and often are . . . [t]hey are essentially legal tasks, regularly undertaken by attorneys.” Evans v. Philadelphia Hous. Auth., Civ. A. No. 93-5547, 1995 WL 154872, at \*7 (E.D. Pa. Mar. 31, 1995) (Gawthrop, J.), aff’d without op. sub nom., 79 F.3d 1139 (3d Cir. 1996). Cf. Donnini Aff. ¶ 10(b) (attached as Exhibit B to Defs.’ Mem.). Moreover, in light of Defendants’ insistence on fully litigating this case in the absence of an identifiable defense strategy, the number of hours expended by Plaintiff’s counsel appear wholly reasonable.

Accordingly, Mr. Donahue is entitled to be compensated for the entire time expended on this litigation, or 14.4 hours.

B. Hourly Rate

Generally, “a reasonable hourly rate is calculated according to the prevailing market rates in the community.” Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). “[A] district court may not set attorneys’ fees based upon a generalized sense of what is customary or proper, but rather must rely upon the record.” Coleman v. Kaye, 87 F.3d 1491, 1510 (3d Cir. 1996), cert. denied, 519 U.S. 1084 (1997). “The plaintiff bears the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered in order to make out a prima facie case.” Smith v. Philadelphia Hous. Auth., 107 F.3d 223, 225 (3d Cir. 1997). Once the plaintiff has met this burden, the defendant may rebut the prima facie case only with appropriate record evidence. See id.

To support his requested hourly rate of \$265.00, Mr. Donahue affixes the affidavit of Alan White, Esq., a colleague at Community Legal Services (“CLS”), who attests that CLS

“has adopted a comprehensive attorney fee schedule based upon a survey of hourly rates charged by private law firms and individual practitioners in Philadelphia.” White Aff. ¶ 5 (attached as Exhibit B to Pl.’s Mem.). This fee schedule supports a billing rate of \$265.00 for an attorney of Mr. Donahue’s experience. See Pl.’s Mem. (Exhibits B1-B3); see also White Aff. ¶¶ 6-11. The underlying survey was compiled by the firm of Altman, Weil, Pensa in 1996 and was adjusted based on additional timely data. See White Aff. ¶ 5. However, the Court notes that the fee schedule does not distinguish amongst the types of litigation engaged in by CLS; rather, it assigns hourly rates to attorneys based upon years of experience irrespective of the particular legal services program being offered. Additionally, the survey upon which the schedule is based was itself not submitted to the Court for consideration.

By contrast, Defendants do attach a survey conducted by Legalgard, Inc. See generally Defs.’ Mem. (Exhibit B thereto). Pursuant to this survey, the prevailing market rate for this action by an attorney with Mr. Donahue’s experience is estimated at \$150.00. See Donnini Aff. ¶ 10(a). In addition, Defendants attach the affidavit of David Denenberg, Esq., another attorney who specializes in the same type of cases handled by Mr. Donahue, who attests that he regularly charges an hourly rate of \$150.00. See Denenberg Aff. (attached as Exhibit C to Defs.’ Mem.).

Under the particular circumstances presented in this case -- an enforcement action of two grievance awards involving no complex legal issues or extensive factual development -- and the record submitted by the parties on this motion, the Court concludes that Mr. Donahue has failed to demonstrate that the requested hourly rate of \$265.00 is reasonable. Moreover, even if Mr. Donahue has met his prima facie burden, Defendants have more than amply introduced

rebuttal evidence that not only challenges Mr. Donahue's requested rate, but also establishes that a reasonable hourly rate calculated according to the prevailing market rates in the community for this particular action is \$150.00.

The Court notes, however, that this conclusion does not foreclose higher hourly rates in other cases, which turn on the peculiar factual circumstances of that case and the record under consideration. See Smith, 107 F.3d at 226 (holding that a district court's mere reliance on the hourly rates set in previous cases is an abuse of discretion). For example, had there been settlement negotiations or complex legal issues, see, e.g., Smith v. Philadelphia Hous. Auth., Civ. A. No. 98-2874, 1999 WL 54565 (E.D. Pa. Jan. 29, 1999) (Angell, M.J.), or other supporting materials submitted, a different (perhaps higher) hourly rate might have been appropriate.

C. Reduction for Partial Success

Finally, Defendants contend that a reduction in the lodestar amount is warranted because Plaintiff "was only partially successful." Defs.' Mem. at 10. That is, Defendants claim that since "plaintiff was given [the] same abatement prior to ever filing this lawsuit[,] [w]hatever 'lodestar' amount this court arrives at after considering the reasonableness of plaintiff's request should be further reduced based on the fact that plaintiff achieved only limited success in that she has received very little benefit from this action." Id. The Court finds no merit to this argument and declines to reduce the award any further.

For the foregoing reasons, the motion for attorneys' fee is granted, with a reduction of the requested hourly rate. Accordingly, the Court awards attorneys' fees in the amount of (14.4 hours) x (\$150.00 per hour) = \$ 2,160.00. An appropriate order follows.

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PHILADELPHIA HOUSING AUTHORITY,	:	
JEROME BRYANT, PAMELA DUNBAR,	:	
and PATRICIA SMITH,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this 12th day of May 1999, upon consideration of Plaintiff's Motion for Attorneys' Fees (Docket No. 13), Defendants' response thereto (Docket No. 14), and Plaintiff's reply memorandum (Docket No. 15), it is hereby ORDERED that the motion is GRANTED, in accordance with the accompanying memorandum.

Plaintiff's attorney, Michael Donahue, Esq. of Community Legal Services, is hereby awarded \$ 2,160.00 as compensation for the successful prosecution of the instant action.

IT IS FURTHER ORDERED that, as Plaintiff's reply memorandum was considered in disposing of the instant motion, Plaintiff's Motion for Leave to File a Reply (Docket No. 15) is GRANTED ex post facto. However, the above-stated award does not reflect the time spent preparing the reply memorandum as there was no obligation placed upon Plaintiff's counsel to file such a document with the Court.

BY THE COURT:

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RONALD L. BUCKWALTER, J.